IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.3563 OF 2007

Smt.Rashmi Ramesh Pahudkar,)
Residing at Shram Safalya Nivas)
Opps. Building No.36, Vikhroli)
Mumbai-400 083.)..PETITIONER

Versus

1.Asha Vasantkumar Anchan,)
24/770, Tagore Nagar,)
Vikhroli (E),Mumbai-400 083)
2.The Caste Scrutiny Committee)
Mumbai Division, Konkan)
Bhavan, CBD, Belapur, Navi)
Mumbai.)
3.Mumbai Municipal Corporation)
Mahapalika Marg, Mumbai,)
Through its Commissioner,)
4.The State of Maharashtra)..RESPONDENTS

Mr. Y.S. Jahagirdar with Mr. Balkrishna D.Joshi for the Petitioner.
Mr. R.K. Mendadkar for the Respondent No.1.
Mr. R.D. Rane, Govt. Pleader for the Respondent Nos. 2 and 4.
Mr. A.J. Bhor for the Respondent No.3.

CORAM : F.I. REBELLO &
R.M.SAVANT,JJ.
DATED : 28TH JUNE, 2007

JUDGMENT (PER F.I. REBELLO, J.):

. Rule. Heard forthwith.

2. The petitioner contested the elections against a seat reserved for Other Backward Classes of Citizens (Women), being Ward No.114 of the Municipal Corporation of Greater Mumbai. Pursuant to the notification issued for holding elections in December, 2006 the elections were held on 1st February, 2007 and the election results were declared on 2nd February, 2007.

. Before contesting the elections the petitioner applied for caste certificate as she claimed as belonging to Shetty community which according to the Petitioner is notified as O.B.C. in the Notification published by the Maharashtra State Government dated 20th May, 2006. In terms of the said Notification at Serial No.171 of O.B.C. list the entry was shown, as "Kurhin, Shetty". It is the case of the petitioner, therefore, that as per the said Notification Kurhin and Shetty are shown as two distinct and separate castes amongst the Other Backward Classes of Citizens. The petitioner was issued caste certificate by the Deputy Collector, Mumbai Suburban District on 13th December, 2006. In support of the application for caste certificate petitioner had submitted affidavit dated 28th September,

2006, Application dated 13th December, 2006, School Leaving Certificate, Caste Certificate of her uncle issued by the Executive Magistrate, Bantwal in Karnataka State, Ration Card, father's death certificate and proof of her residence in Mumbai.

3. The Petitioner's caste certificate had been forwarded to the respondent No.2 under Caste Verification Application No.3521 dated 15th January, 2007 which was received by the Sub Divisional Officer, Mumbai Suburban District.

4. Respondent No.1 on 12th February, 2007 had also filed a complaint before the respondent No.2 complaining that the caste certificate issued to the petitioner is bogus and fraudulent and that it be declared invalid. The respondent No.2 issued letter to the petitioner calling upon the petitioner to show cause as to why the caste certificate should not be declared invalid. The petitioner was called upon to submit the documents in support of her caste claim. The petitioner also received a letter from the Vigilance Cell dated 17th February, 2006 calling upon the petitioner to produce all documents before it within a period of 15 days. It is the case of the petitioner that she appeared before the respondent No.2 on 17th March, 2007 and filed detailed reply to the allegations made by the Respondent No.1 in respect of the caste certificate issued to the Petitioner. In paragraph 7 of the petition the petitioner has averred that as the petitioner originally hails from

Karnataka State she was directed by the Vigilance Cell to book return railway ticket from Mumbai to Mangalore in the name of the officers in order to verify the caste of the Petitioner by the vigilance cell, by visiting her place of origin, but was surprised to receive oral instructions to cancel the officers railway tickets booked by the petitioner As such the Officers of the Vigilance Cell, never visited her native place nor visited her place of origin.

5. On the complaint received from Respondent No.1, the Respondent No.4 issued a letter dated 15th March, 2007 to the Advocate of respondent No.1 as also a communication on 15th March, 2007 by the Under Secretary wherein it was clarified that in the list of O.B.C. at Serial No.171 "Kurhinshetty" should be read as one word instead of separate words such as "Kurhin, Shetty".

6. The Respondent No.2 Committee after considering the caste verification application and also hearing the Petitioner and respondent No.1 on her complaint by its order dated 12th April, 2007 declared the caste certificate issued to the petitioner as invalid. By the present petition the petitioner seeks to challenge the said decision.

7. It is the case of the petitioner that before the Committee respondent No.2, it was pointed out that right from the year 1976 by various Notifications issued by the State Government, at Serial No.171 the entry was always

shown as "Kurhin, Shetty". In other words two separate castes falling under the O.B.C. category were shown against the said entry. This was so done in the year 1976 and repeated in the year 1996 and once again in the list published on 25th May, 2006.

. On behalf of the respondent NO.3 reply has been filed. It has been pointed out that the list of O.B.Cs. was notified on 13th October, 1967 by a Government Resolution and at Serial No.171 the caste was shown as "Kurhinshetty". It is, however, pointed out that there was a printing error in the list updated vide Government letter dated 25th May, 2006 which has been rectified subsequently on 15th March, 2007 by the Government. It is set out that "Kurhinshetty" is one caste and not "Kurhin, Shetty" which denotes two distinct castes. It is further pointed out that the Shetty caste is not in the list of O.B.Cs.notified by the State of Maharashtra and hence the petitioner is not entitled to the benefit of reservation.

. A reply has also been filed by Mrs. Asha V. Anchan, respondent No.1 and a rejoinder thereto by the petitioner herein. Considering the facts on record it is not necessary to deal with the averments in the said two affidavits.

8. We may mention that during the pendency of the petition the petitioner took out a Civil Application for amendment of the petition to include an additional ground.

By order dated 19th June, 2007 we had allowed the Civil Application and directed that the amendment be carried out during the course of a week. It appears that the said amendment has not been carried out as the records were not available to the petitioner. It will be open to the petitioner to carry out the said amendment within 7 days of receiving a copy of this judgment.

9. The contentions urged on behalf of the petitioner may now be set out.

(1) It is submitted that when the petitioner filed her nomination in the list of O.B.C. notified by the State Government at Serial No.171 of the list of Other Backward Community, the entry shown was as "Kurhin, Shetty" thereby indicating that these were two separate castes included in the said list, against the said entry. It is submitted that such an entry at Serial No.171 of the Notification showing two castes existed right from 1976 until the Notification was amended by communication dated 15th March, 2007. It is, therefore, submitted that the subsequent deletion of the name Shetty from the list of O.B.C. would have no effect on the Petition’s caste claim. The Committee ought to have, therefore, considered the petitioner’s case in that context.

(2) It is next submitted that the communication of

15th March, 2007 making alterations in entry No.171 by substituting Kurhinshetty" from the existing "Kurhin, Shetty" could not have been made with retrospective effect and at any rate such a change could have been effected under the Business Rules by an Officer who could authenticate the same on behalf of the Honourable Governor and could not have been done by the Under Secretary or Deputy Secretary.

(3) It is next contended that the decision of the Committee whereby the claim of the petitioner was negatived was done by a Committee which was improperly constituted. The Chairman of the Committee is the Deputy Commissioner (Revenue) and not Commissioner or Additional Commissioner(Revenue) in terms of the Government Notifications and consequently the impugned order also on that count is liable to be set aside.

10. Before we answer the points formulated, we may refer to some additional facts. The petitioner in para.7 of the petition has stated that she originally hails from the State of Karnataka. In the representation dated 17th March, 2007 addressed to the Chairman in the form of a reply to the application filed by the respondent No.1 she has stated that she belongs to Hindu-Bunt caste community and the said community is popularly known as Shetty in the State of Maharashtra and is recognised as O.B.C. in the list of

O.B.Cs. at Serial No.171. Reliance was placed on the affidavit of her uncle Shri Raghunath Shetty which sets out that the Shetty caste is also called as Bunt and that in his School Leaving Certificate his caste is clearly shown as Hindu-Bunt (Shetty). In so far as the school records of the petitioner are concerned, the caste is shown as Hindu-Maratha. It is mentioned that in the School Certificate her caste was inadvertently shown as Hindu Maratha and that she had filed an affidavit before the Tahsildar, Kurla-Mulund stating her caste as Hindu Bunt (Shetty). A compilation of the documents produced by the petitioner before the Committee, have been filed before us. The certificate issued in favour of Mahabala Shetty, Petitioner's uncle shows that he belongs to backward classes Bunt (Shetty). The caste certificate issued in favour of the petitioner shows her caste as Shetty. In the affidavit filed by Mahabala Shetty he has set out that he had applied for the birth certificate of his brother Sanjeeva Shetty from the office of the Tahsildar of Bantwal, Karnataka State who has given an endorsement that the birth certificate was not available. The father of the petitioner in terms of the affidavit of Mahabala Shetty was born on 13th September, 1937 at Kodman, Pudu Village Batwal Taluka, Karnataka State. It sets out that he was permanently residing in the State of Maharashtra. The petitioner in the affidavit dated 14th January, 2007 in para.9 averred as under:-

"I further say and declare that I require a Caste

Certificate in my name as Hindu-Shetty (Bunt)."

11. On behalf of the State Government learned Government Pleader has produced a G.R. dated 13th October, 1967 which shows the list of O.B.Cs. as notified and under Serial No.171 it is shown as "Kurhin Shetty". In the list notified on 17th August, 1984 under entry No.171 it is again shown as "Kurhinshetty".

. As against this the Petitioner has produced a Government Notification purporting to be of the year 1976 which shows in the Publication in the in the Nagari Script for O.B.C. under Entry No.171, the entry as "Kurhin, Shetty". Similar notifications were also issued subsequently including of 2006 until the rectification on 15th March, 2007.

. From the affidavit filed by J.N. Rathod it is clear that the caste as originally notified by the State Government under Entry No.171 of the List of O.B.Cs. was "Kurhinshetty" under Government Resolution of 13th October, 1967 and the subsequent re-notifications showing the caste as "Kurhin, Shetty; was a printing mistake and that Shetty caste is not in the list of O.B.Cs. recognised by the State of Maharashtra. There is no material to show that after the Government Resolution of 1967 the State Government appointed any Committee for splitting of the caste "Kurhinshetty" into caste "Kurhin, Shetty" or otherwise.

12. With the above facts we may answer the contentions as argued before us. From the facts on record as now available it would be clear that in the Government Circular dated 1st October, 1962 notifying Other Backward Classes neither "Kurhinshetty" nor "Kurhin, Shetty" were included as O.B.C. The Government thereafter notified a revised list of O.B.Cs. by Government Resolution, notified on 13th October, 1967 whereby for the first time the caste "Kurhindshetty" came to be included in the list of O.B.C. What has thereafter transpired is that from time to time with the inclusion of other O.B.Cs. the Government has been issuing lists of O.B.C. In the Notification of 17th August, 1984, the English notification shows the notified O.B.C. as Kurhinshetty. The Notification of 1976 in Nagari Script shows the caste as "Kurhin, Shetty" and this has continued in some other notifications. The mere fact that there occurred a printing error or typing error whilst issuing revised lists of O.B.Cs. in the light of the affidavit filed on behalf of the State Government that caste Shetty has not been notified as O.B.C. cannot result in the said caste being treated as O.B.C.merely because in some notification the caste was erroneously so notified. It cannot be said that correction of the printing error will result in the notification becoming retrospective. As already pointed out the G.R. of 1967, has not been subsequently amended to show the caste "Kurhinshetty" as "Kurhin" and "Shetty" castes under one entry. What is the effect of the petitioner bonafidely contesting will be

answered subsequently.

13. We must bear in mind that the Constitutional mandate as provided in Article 15(4) empowers the State to make special provisions for the advancement of any social and educational backward classes of citizens. That would require the State to first identify the social and economically backward classes of citizens. It is not the case of the petitioner nor has any material being produced that the State of Maharashtra at any point of time had identified citizens belonging to the Caste "Shetty" as a class of citizens who were economically and socially backward. Therefore, a printing error or typing error cannot confer a right which otherwise the State has not extended by way of affirmative action, as that would be constitutionally impermissible. We are clearly, therefore, of the opinion that the finding recorded by the Committee on that count cannot be faulted. The Committee relied on the Government Resolution of 13th October, 1967 and held that the list declared on 6th May, 22006 was a typing error which has been corrected by corrigendum dated 15th March, 2007.

14. The second contention may now be adverted to.The Notification of 15th March, 2007 also cannot be said to be retrospective as it only gives effect to the Government Resolution of 1967. The corrigendum issued has not the effect of amending the Government Resolution of 1967, which was duly authenticated and issued by and in the name of the

Governor. The argument could have been countenanced if additional list of O.B.Cs. were notified by amending the Government Resolution. That is not the case.

. The Rules of Business for authentication have not been placed before us. Normally under the Rules of Business and/or authentication, the Notifications is always signed by a person competent to issue the notification under the rules after it has received the assent of the Governor. The provision for authentication has to be made by Rules pertaining to business of Government under Article 166(2). Under Article 166(2) orders and other instrumetns set out therein require to be authenticated. In the instant case the G.R. of 1967 has been authenticated. Anything therefore, contrary to the said G.R. would be of no effect. Correction of typing error does not require authentication unless it is in the G.R. itself. That is not the case. In the instant case what was noted was a printing error in a notification which was contrary to a duly authenticated G.R., which has merely been corrected to give effect to the resolution of 1967. The second contention must be, therefore, rejected. A typographical error cannot confer a right.

15. The third contention as raised by an amendment was that the Chairman could not have presided over the meeting. We have now the facts on record which clearly set out that the O.B.C. notified was "Kurhinshetty". The question is

whether considering the record we should entertain the petition in the exercise of our extra ordinary jurisdiction. Let us consider the material on record which we have earlier adverted to. In the School Leaving Certificate of the petitioner her caste was shown as Hindu Maratha. The caste of her uncle Mahabala Shetty issued by the State of Karnataka State shows his caste as Bunt (Shetty). The petitioner got the caste certificate issued by relying upon amongst others the affidavit and caste certificate of her uncle Mahabala Shetty. Even in the reply filed to the objection filed by the Respondent No.1 in para (c) she stated that she belongs to Hindu-Bunt caste community. It is her contention that the said community is known as Shetty in the State of Maharashtra. No notification has been issued by the State of Maharashtra or produced either before the Committee or before us to show that the Bunt caste which is not notified as O.B.C.in the State of Maharashtra. is the same as caste Shetty. In the affidavit of 29th August, 2006 the petitioner declared that she belongs to Hindu-Bunt caste which is recognised as O.B.C. by the Government of Karnataka and Maharashtra. Her uncle Mahabala Shetty got the caste certificate issued as belonging to Bunt caste. The transfer certificate of Raghunath Shetty, who claims as per the genealogy chart as the brother of late Sanjeeva Shetty, the late father of the petitioner shows as belonging to Hindu Bunt (Shetty). The other material on record would indicate that it is the case of the petitioner herself that she originally hailed from the State of Karnataka.

. From the facts on record in our opinion this would not be a fit case for us to exercise the extra ordinary jurisdiction as otherwise the order of the committee does not suffer from any error apparent on the fact of the record.

. In our opinion even if there be some irregularity or illegality in the person presiding acting as Chairman of the Committee on account of the post he was holding, nevertheless the defacto doctrine could always be applied, to save the decisions already made considering that the Committee as constituted must have decided a large number of caste claims.

16. It is made clear that in the peculiar circumstances of this case as the petitioner bonafide contested the election as an O.B.C. she cannot be prosecuted for obtaining a false caste certificate.

17. For the reasons aforesaid we find no merit in this petition. Rule discharged with no order as to costs.

18. Learned Counsel for the petitioner seeks continuation of interim relief. Considering the facts and circumstances we continue the interim relief for a further period of twelve weeks. The interim relief granted earlier reads as under:-

"Pending hearing and final disposal of this petition the judgment and order of the respondent No.2 dated 12th April, 2007 annexed as Exhibit "H" hereto be stayed."

. If the Petitioner moves the Supreme Court for interim relief, notice be given to the Respondents.

(F.I. REBELLO, J.)

(R.M. SAVANT, J.)